

IN THE UNITED STATES DISTRICT COURT

FILED
BILLINGS DIV.

FOR THE DISTRICT OF MONTANA

2009 DEC 21 AM 10 05

BUTTE DIVISION

PATRICK E. DUFFY, CLERK
BY _____
DEPUTY CLERK

KEVIN T. MURPHY,) CV-09-65-BU-RFC-CSO

)

Petitioner,)

)

vs.)

)

ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS OF
U.S. MAGISTRATE JUDGE

MIKE MAHONEY; ATTORNEY)
GENERAL OF THE STATE OF)
MONTANA,)

)

Respondents.)

)

On November 24, 2009, United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation as to Murphy's 28 U.S.C. § 2254 Petition for Writ of Habeas Corpus. Magistrate Judge Ostby recommends the petition be denied on its merits because Murphy does not state a claim under § 2254. Judge Ostby further recommends a certificate of appealability be denied.

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party objected to the Findings and Recommendation. Failure to object to the findings and recommendation waives all objections to the findings of fact. *Turner*

v. Duncan, 158 F.3d 449, 455 (9th Cir. 1999). Failure to object, however, does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

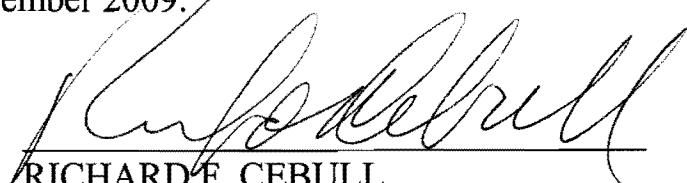
After an extensive review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

Accordingly, **IT IS HEREBY ORDERED** as follows:

- (1) Murphy's Petition (*Doc. 1*) is **DENIED** on its merits; and
- (2) a certificate of appealability is **DENIED**.

The Clerk of Court is directed to notify the parties of the entry of this Order and enter judgment accordingly.

DATED the 21 day of December 2009.


RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE